

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CARL L. DeVLIEGER,	:	Civil Action No.:
	:	
Plaintiff,	:	
v.	:	
	:	
CITY OF WARREN PENNSYLVANIA and PENNSYLVANIA MUNICIPAL SERVICE COMPANY,	:	
	:	
Defendants	:	
	:	

COMPLAINT

AND NOW, comes the Plaintiff, CARL DeVLIEGER, by and through his attorney, W. John Knox, Esq. of Sebald, Hackwelder & Knox, and files his Complaint against the Defendants, CITY OF WARREN, PENNSYLVANIA and PENNSYLVANIA MUNICIPAL SERVICE COMPANY setting forth in support thereof the following:

PARTIES

1. Plaintiff, CARL L. DeVLIEGER, is an adult individual who currently resides at 426 Friedrich Drive, Warren, Pennsylvania 16365.

2. Defendant, CITY OF WARREN, PENNSYLVANIA (“CITY OF WARREN”) is a Pennsylvania Third Class City with its offices located at 318 West Third Avenue, Warren, Pennsylvania 16365.

3. PENNSYLVANIA MUNICIPAL SERVICE COMPANY (“PAMS”) is a governmental contractor operating under the color of law for the CITY OF WARREN with a principal place of business located at 336 Delaware Ave, Oakmont, Pennsylvania 15139.

JURISDICTION AND VENUE

4. The Plaintiff, CARL DeVLIEGER brings his Complaint under federal subject matter jurisdiction, 28 U.S.C. §1331 and the amount in controversy exceeds \$75,000.00.

5. CARL DeVLIEGER is pursuing actions pursuant to federal statute, 42 U.S.C. §1983.

6. Venue is proper in the Western District of Pennsylvania against the CITY OF WARREN, where the CITY OF WARREN maintains an office located at 318 West Third Avenue, Warren, Pennsylvania 16365 and PAMS conducts business in Warren, Pennsylvania.

STATEMENT OF FACTS

7. PAMS is a government contractor that was hired by the CITY OF WARREN to collect overdue water and sewage fees on its behalf from residents of the CITY OF WARREN.

8. For several years, CARL DeVLIEGER has owned real estate in the CITY OF WARREN, including properties located at 123 6th Avenue, Warren, Pennsylvania and 426 Friedrich Drive, Warren, Pennsylvania.

9. Said properties were serviced by sewage through the CITY OF WARREN.

10. On or about August 16, 2023, PAMS issued a notice to CARL L. DeVLIEGER which stated: “WATER SERVICE WILL BE TERMINATED ON OR ABOUT September 05, 2023 ON THESE PREMISES BECAUSE OF NON-PAYMENT OF SEWAGE FEES PURSUANT TO ORDINANCE NUMBER 663 OF CITY OF WARREN AND PENNSYLVANIA STATE ACT OF 2006 P.L. 85, NO. 28 SECTION 502, AS AMENDED. THE AMOUNT DUE 1200.84 THROUGH PERIOD ENDING 3/16/23 BY THE ORDER OF CITY OF WARREN.”

(hereinafter the “Notice”, attached hereto as Ex. A).

11. Furthermore, the Notice from PAMS stated:

FOR PROCEDURE TO CHALLENGE THIS TERMINATION READ BELOW.

You have an opportunity to challenge your sewage fee. You can delay or avoid the termination of your water service by either paying the delinquent amount in full **on or before August 28, 2023** by complying with the procedures set forth in Pennsylvania State Act of 2006 P.L. 85, NoO. 28 Section 502 as amended **on or before August 28, 2023** or by requesting a hearing before the Pennsylvania Municipal Service Company at which time you will have an opportunity to present your reasons, arguments, and proof as to why you do not owe the delinquent amount or why you should not be required to pay it within the prescribed time.

If you desire a hearing, you must request one by **8/26/23** by filing a written request for a hearing with the Pennsylvania Municipal Service Company. This written request must be delivered to the Pennsylvania Municipal Service Company or postmarked by **8/26/23**. By properly filing a request for a hearing, the termination of your water service shall be delayed until the matter is resolved.

Upon receipt of your request for a hearing, you shall be notified by certified mail of the time, date and place of your hearing. At your hearing, you will have an opportunity to present arguments and proof substantiating your position.

(Ex. A)

12. On August 25, 2023, CARL L. DeVLIEGER exercised his appeal rights as set forth in the Notice by mailing a timely written request for a hearing to PAMS as evidenced by the attached letter to PAMS dated August 25, 2023 (Ex. B) and the accompanying mailing envelope to PAMS postmarked August 25, 2023. (Ex. C).

13. Notwithstanding the act that CARL L. DeVLIEGER properly and timely exercised his appeal rights, The CITY OF WARREN terminated water service to the property on or about September 5, 2023, contrary to the language of the Notice which stated: "By properly filing a request for a hearing, the termination of your water service shall be delayed until the matter is resolved." (Ex. A)

14. On August 28, 2023, a representative of PAMS telephoned CARL L. DeVLIEGER and informed him that PAMS was refusing his request for a hearing, and he would not receive a certified letter.

15. To date, neither PAMS nor the CITY OF WARREN has granted CARL L. DeVLIEGER a hearing to challenge the alleged sewer fees of the CITY OF WARREN.

16. After the water service remained off for a period of a few days, CARL L. DeVLIEGER received a telephone call from Gary Swartz, a representative of the CITY OF WARREN Building Code Department who advised CARL L. DeVLIEGER that if he didn't turn on the water service, the CITY OF WARREN would condemn the property located at 123 6th Avenue.

17. Thereafter, in or around October 23, 2023, the CITY OF WARREN posted Condemnation Notices at the property located at 123 6th Avenue.

COUNT I – 42 U.S.C. §1983

Carl L. DeVlieger v. Pennsylvania Municipal Service Company

Denial of Procedural Due Process

18. Plaintiff incorporates by reference hereto all general allegations set forth in paragraphs 1 through 17 of his Complaint above.

19. The Fourteenth Amendment to United States Constitution and Article 1, section 26 of the Pennsylvania Constitution prohibit state actors from depriving an individual of liberty without due process of law. Specifically, the Pennsylvania Constitution states that “Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” This substantive guarantee is intended to prevent state actors from employing their power in an abusive or oppressive manner.

20. Plaintiff has fundamental property and liberty interests in real property that he owns.

21. Plaintiff, CARL L. DeVLIEGER is afforded due process under the law to challenge the sewer fees claimed in the Notice.

22. Plaintiff properly and timely exercised his appeal rights.

23. PAMS acting under color of law as a government contractor for the CITY OF WARREN deprived the Plaintiff of his property and liberty interests in the real estate located at 123 6th Avenue by denying his procedural due process rights.

24. Specifically, PAMS acting under color of law as a government contractor for the CITY OF WARREN deprived the Plaintiff of his appeal rights, privileges and immunities by wrongfully rejecting his his written request for a hearing postmarked August 25, 2023.

COUNT II – 42 U.S.C. §1983

Carl L. DeVlieger v. the City of Warren Pennsylvania

Denial of Procedural Due Process

25. Plaintiff incorporates by reference hereto all general allegations set forth in paragraphs 1 through 24 of his Complaint above.

26. The Fourteenth Amendment to United States Constitution and Article 1, section 26 of the Pennsylvania Constitution prohibit state actors from depriving an individual of liberty without due process of law. Specifically, the Pennsylvania Constitution states that “Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” This substantive guarantee is intended to prevent state actors from employing their power in an abusive or oppressive manner.

27. Plaintiff has fundamental property and liberty interests in real property that he owns.

28. Plaintiff, CARL L. DeVLIEGER is afforded due process under the law to challenge the sewer fees claimed in the Notice.

29. Plaintiff properly and timely exercised his appeal rights.

30. The CITY OF WARREN, acting under color of law, deprived the Plaintiff of his property and liberty interests in the real estate located at 123 6th Avenue by denying his procedural due process rights.

31. Specifically, the CITY OF WARREN deprived the Plaintiff of his appeal rights, privileges and immunities by wrongfully rejecting his his written request for a hearing postmarked August 25, 2023.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, CARL L. DeVLIEGER, prays that the Court grant the following relief:

- (a) Enter a judgment against the CITY OF WARREN and PAMS declaring that the Defendants violated the Fourteenth Amendment to United States Constitution and Article 1, section 26 of the Pennsylvania Constitution by wrongfully rejecting his his written request for a hearing postmarked August 25, 2023.
- (b) Award compensatory damages to CARL L. DeVLIEGER to fully compensate him for damages to his property rights caused by the CITY OF WARREN and PAMS;
- (c) Reasonable attorneys' fees and costs of suit; and
- (d) Award such additional relief to CARL L. DeVLIEGER as justice may require, together with the costs and disbursements in this action.

WHEREFORE, the Plaintiff, CARL L. DeVLIEGER, respectfully requests this Honorable Court to enter a judgment in his favor and against the CITY OF WARREN, PENNSYLVANIA and the PENNSYLVANIA MUNICIPAL SERVICE COMPANY together with interest, attorneys' fees and costs of suit.

JURY TRIAL DEMANDED

Respectfully Submitted,

SEBALD, HACKWELDER & KNOX

/s/ W. John Knox, Esq.

By _____

W. JOHN KNOX, Esq.

PA ID # 77484

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Erie, Pennsylvania 16503

Tel. 814-833-1987

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**Attorneys for Plaintiff, CARL L.
DeVLIEGER**

Dated: June 5, 2024

CERTIFICATE OF SERVICE

I, W. JOHN KNOX, ESQUIRE, do hereby certify that on the **5th day of June, 2024**, a copy of the foregoing Plaintiff's Complaint was served electronically on the following parties:

**City of Warren
318 West Third Avenue
Warren, Pennsylvania 16365**

**Pennsylvania Municipal Service Company
336 Delaware Ave.
Oakmont, Pennsylvania 15139**

Respectfully submitted,

SEBALD, HACKWELDER & KNOX

BY: /s/ W. John Knox, Esq.

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